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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/446,550	12/22/1999	OLAF ERIK ALEXANDER ISELE	CM-1519Q	2485
27752 7590 05/01/2007 THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION - WEST BLDG. WINTON HILL BUSINESS CENTER - BOX 412 6250 CENTER HILL AVENUE CINCINNATI, OH 45224			EXAMINER ANDERSON, CATHARINE L	
			ART UNIT 3761	PAPER NUMBER
			MAIL DATE 05/01/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/446,550	ISELE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	C. Lynne Anderson	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 16-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 21-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 15 February 2007 has been entered.

### ***Response to Arguments***

Applicant's arguments filed 15 February 2007 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Wu teaches an improvement to a film that is both breathable and impervious. That Dobrin does not provide a motivation to modify the backsheet is irrelevant, since Wu provides such a motivation.

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In response to the applicant's argument that Dobrin teaches away from a microporous film, it is noted that the microporous films discussed by Dobrin in column 1, lines 31-46, are not the same type of microporous film taught by Wu. The microporous films discussed by Dobrin, such as that disclosed by Crowe, Jr., are not films comprising a filler material such as those taught by Wu. Wu discloses a film that overcomes the disadvantages of the microporous films discussed by Dobrin, and therefore it would be obvious to modify Dobrin based on the teachings of Wu.

In response to the applicant's argument that the cited combination would defeat the intended purpose, it is noted once again that since Wu teaches an advantage over the microporous films discussed by Dobrin, the point is moot.

In response to the applicant's argument that there is no reasonable expectation for success, it is noted that while Wu does not disclose aperturing a microporous film, a microporous film is fully capable of being apertured after formation, and therefore the rejection stands.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15 and 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dobrin et al. (5,628,737) in view of Wu et al. (5,865,926).

Dobrin discloses all aspects of the claimed invention with the exception of a particulate filler material imbedded in the polymeric film layer. Dobrin discloses an absorbent article 20, as shown in figure 2, comprising a core region 74, and a chassis region 76 surrounding the core region 74. The article 20 further comprises a laminate 95, as shown in figure 3, which extends into both the core region 74 and the chassis region 76 to form a core backsheet and a chassis backsheet. The laminate 95 comprises a polymeric film layer 26, as described in column 6, lines 42-43, and a fibrous layer 90, as described in column 9, lines 51-52. The laminate 95 is a breathable, unitary layer. The laminate 95 comprises apertures 84 in the chassis region 76, giving the chassis region 76 a higher degree of breathability than the core region 74, and therefore the MVTR value of the core region 74 is lower than that of the chassis region 76.

Wu discloses a breathable laminate for use in an absorbent article, as disclosed in column 4, lines 37-42, comprising a polymeric film layer and a fibrous layer, as described in column 2, lines 60-64. The polymeric film comprises a polymeric matrix and a particulate filler material, as disclosed in column 3, lines 2-17. The breathability of the laminate is enhanced by the formation of cracks around the particulate filler material, as disclosed in column 3, lines 19-21. The laminate is passed through a pair of rolls comprising ridges and grooves which provides a multiplicity of corrugations to the laminate, as disclosed in column 4, lines 51-65, and shown in figure 2.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the laminate of Dobrin using the polymeric film layer of Wu to increase the breathability of the laminate.

With respect to claim 2, Dobrin discloses the polymeric film layer 26 is wider than the fibrous layer 90, as described in column 10, lines 7-9.

With respect to claims 3 and 4, Wu discloses a MVTR of at least 500 g/24hr/m<sup>2</sup>, as described in Table II.

With respect to claims 5 and 6, Dobrin discloses all aspects of the claimed invention but remains silent as to how much greater the transmission rate of the chassis region is than the transmission rate of the core region. The chassis region is apertured to increase its breathability, and therefore has a higher transmission rate than the core region.

With respect to claim 7, Wu discloses the filler material is calcium carbonate, as described in column 3, lines 14-17.

With respect to claim 8, Wu discloses the laminate has a basis weight of about 64 gsm (Table II), and the nonwoven web has a basis weight of about 20 gsm (column 4, line 29), and therefore the basis weight of the polymeric layer is less than 50 gsm.

With respect to claim 9, Wu discloses the laminate has a basis weight of less than 70 gsm, as disclosed in Table II.

With respect to claim 10, Dobrin discloses the fibrous layer 90 is a non-woven web, as described in column 9, line 52, and Wu discloses a non-woven web in column 4, lines 10-12.

With respect to claims 11 and 13, Wu discloses combining the polymeric layer and the fibrous layer by thermobonding and adhesive bonding, as described in column 3, lines 5-8.

With respect to claim 12, Wu discloses the polymeric layer and the fibrous layer are combined by extrusion, as disclosed in column 6, lines 18-21.

With respect to claims 14 and 15, Dobrin discloses a baby diaper, as shown in figure 1.

With respect to claims 21 and 22, Dobrin discloses the polymeric layer 26 is a unitary layer extending both into the core and the chassis to form the backsheet material 95.

With respect to claim 23, Wu discloses the laminate has a basis weight of about 64 gsm (Table II), and the nonwoven web has a basis weight of about 20 gsm (column 4, line 29), and therefore the basis weight of the polymeric layer is greater than 25 gsm.

With respect to claim 24, Wu discloses the polymeric layer comprises a polymeric matrix and a particulate filler material, as disclosed in column 3, lines 35-38.

With respect to claim 25, Wu discloses an activation process comprising passing the laminate through a roll pair comprising ridges and grooves, as shown in figure 2, to provide a multiplicity of grooves.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

UA  
cla

April 26, 2007

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

